

**Chevron Shipping Co. and Marine Engineers Beneficial Association, District No. 1-Pacific Coast District.** Case 32-UC-292

May 10, 1995

**DECISION ON REVIEW AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND TRUESDALE

On May 12, 1993, the Regional Director for Region 32 issued a Decision and Order in which he found that the licensed mates employed on the Employer-Petitioner's United States flag fleet and the licensed assistant engineers working on steam tankers were statutory supervisors. The Employer-Petitioner (Employer) and the Union filed timely requests for review of the Regional Director's Decision. By Order dated September 2, 1994, the Board granted the Union's request for review with respect to the supervisory status of the second and third mates, and the assistant engineers on steam tankers, denied the Union's request for review in all other respects, and denied the Employer's request for review.<sup>1</sup>

The Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record, including the briefs on review,<sup>2</sup> for the reasons set forth below the Board finds that the second and third mates, and the assistant engineers on steam tankers, are not, contrary to the Regional Director, statutory supervisors and, therefore, that they are properly included in the collective-bargaining unit.

I.

The Employer operates seagoing oil tankers that transport petroleum products in domestic and international markets. The Employer's flag fleet is composed of two steam-driven tankers (steamers) and five gas-turbine tankers (GTs). Since 1960, the Union has represented a unit of all licensed mates and assistant

engineers employed by the Employer on its domestic fleet;<sup>3</sup> the most recent contract expired on March 31, 1993. Each tanker is staffed by a master (Captain), a chief engineer, and 8-10 officers, including a first mate, two second and third mates, and three assistant engineers.<sup>4</sup> Each steamer is also staffed by a crew of unlicensed employees, including a boatswain, three oilers, six able-bodied seamen (ABs), one utility, one pumper, and the stewards. The crew on a gas tanker includes a boatswain, six ABs, a steward, a messman, and one or two utility employees. The training of the second and third mates and assistant engineers involves a high level of technical expertise and they are specifically trained to deal with very complex situations. Master Reynolds testified that deck officers are highly trained competent professionals.

When at sea, the Employer's tankers operate 24 hours per day, with a workday for employees of six 4-hour watches. Each mate and assistant engineer works two watches per day, and when on watch are referred to as the "Watch Officer." The master and chief engineer do not stand watch. The second and third mates, and assistant engineers, when acting as watch officers, have charge of the safety of the ship, crew, and cargo, and the crew on watch reports to the watch officer. The watch officer is responsible for posting a proper lookout; is able to call additional unlicensed crew on watch; may, on his or her own initiative, suspend all work on deck in situations involving bad or potentially dangerous weather; directs the deck crew; and assigns duties to the ABs. The watch officer determines how to respond to navigational hazards and may order the vessel to change course. The watch officer is responsible for cargo operations during his or her watch.

The engineering watch officer is responsible for the engineroom and its crew, directs the work of those assigned to the engineroom, and trains unlicensed crew. The engineering watch officer may take immediate action to address problems. If the watch officer can address the problem and does not believe that severe damage or a breakdown will occur, the watch officer need not notify the chief engineer. The first assistant engineer also assigns work to employees, oversees all overtime work, and distributes work among engineers after consulting with the chief engineer.

In addition to the navigation of the ship, licensed personnel perform various tasks, including loading and unloading of cargo, ballasting, mooring, anchoring, tank cleaning, and maintenance. The first mate plans the loading and unloading of cargo, and then instructs

<sup>1</sup> We note that the Employer filed a motion requesting that the Board reconsider its denial of review with respect to the supervisory status of the licensed engineers aboard gas turbine vessels. In its motion, the Employer raised the same issues it raised in its request for review. As the Employer has not provided any reason to reconsider the status of the licensed engineers, we deny the motion for reconsideration as both lacking in merit and not raising anything not previously considered.

<sup>2</sup> The Employer filed a motion to strike a portion of the Union's brief, on the ground that the Union improperly relied on unpublished precedent. We deny the Employer's motion. The Union cited an unpublished memorandum opinion of the Ninth Circuit enforcing a Board opinion. See *Chevron U.S.A.*, 309 NLRB 59 (1992), *enfd.* by unpublished mem. 28 F.3d 107 (9th Cir. 1994). The Board may, of course, take cognizance of its own decisions, which remain precedent for it. That a court of appeals may have enforced such an opinion by unpublished order does not detract from the precedential value of the Board's opinion.

<sup>3</sup> The Employer employs approximately 134 licensed officers (approximately 17 each of first mates, second mates, first assistant engineers, and second assistant engineers, and 33 each of third mates and third assistant engineers).

<sup>4</sup> The master, chief engineer, and first mate are statutory supervisors.

the mates and crew regarding how it is to be accomplished. If the first mate is unavailable, the watch officer takes the role, following the first mate's plans. During tank cleaning, which can be very dangerous because of potential exposure to toxic gases, the watch officer monitors the precleaning flushing of the tanks and decides when conditions are safe enough for the cleaning process to begin; however, it is generally the first mate who enters the tank first to ensure the safety of the crew.

Ballasting is the process by which the level of sea water is maintained in the tanks to balance the vessel. On steamers, the watch officer directs the unlicensed crew during this procedure. On gas turbines, however, the process is mechanized, and the watch officer controls ballasting from the control room. During the anchoring of the ship, the master or pilot gives the watch officer instructions, which are then passed down to the ABs. The watch officer must decide whether to release or take up the anchor chain to avoid either straining it or allowing it to trail under the hull. Mooring is the most difficult and most dangerous task, and is either done alongside the dock by a tugboat or offshore by tying the ship to a buoy with lines. During mooring and unmooring, the first mate and master are on the bridge, the second mate is at the bow, and the third mate is at the stern. The second and third mates each have charge of three to four deckhands, and they instruct them, for example, how to manage the lines, or whether to tie the ship to the tugboat. The mates' instructions are critical as the line can get caught in the ship's propellers if thrown at the wrong time.

The first mate is in charge of, and plans, all deck maintenance, and the boatswain, also known as the maintenance foreman, supervises the maintenance work. First Mate Janks-Reichhold testified without contradiction that the crew essentially works for the boatswain, an unlicensed officer, when performing maintenance, which appears to constitute a large component of the crew's duties.

Each master issues standing orders for the officers, which lay out in detail the duties and tasks for each position. Master Reynolds testified that under his standing orders, a watch officer is to summon him whenever an emergency or even a doubtful situation occurs, and also is to notify him when deviations from routine occur. The Employer's "Masters' and Deck Officers' Operating Regulations" (OR) request that the watch officer call the master whenever the watch officer is unsure what to do, and before a doubtful situation becomes an emergency. The OR also authorizes a watch officer to stop work in any area of the ship if a hazard arises. Reynolds testified that according to his standing orders, deck officers should call him anytime that they are in doubt or if there are any questions, "without fear of censor or reprimand." Reynolds also

stated that even in cases where he wanted the watch officers to make decisions themselves, for example, when to change the speed of the vessel, they have been instructed to notify him afterwards.

The Steam Engine Officers Operating Regulations provide that the engine watch officer must call the chief engineer when "in any doubt concerning" the engine rooms, "on the first indication of any unusual occurrences," when excessive fuel or water is consumed, when other than routine orders are received from the bridge, and in all cases where the engine is put on standby. The engine room standing orders on 1 ship consist of 24 pages of detailed routines to be followed daily, weekly, monthly, and quarterly, and include routines for the licensed engineers and the oiler. Watch engineers can give orders to the oiler, who is technically under the chief engineer in the chain of command, and the watch engineer is responsible for training the oiler on watch. On steam tankers, the first assistant engineer may grant overtime to oilers and pumpers and the utility person assigned to the engine department.

The Employer's personnel office makes all final decisions regarding hiring, firing, evaluating, promoting, or granting wage increases to employees. Written evaluations are prepared by the masters or chief engineers. First mates frequently make recommendations to the master regarding unlicensed crew, or prepare written evaluations and submit them to the master for his signature. The junior licensed officers provide input regarding the performance of the crewmembers. This input, the frequency of which is not disclosed, is generally of a casual nature and constitutes observations by the junior officers. The same is true with respect to the assistant engineers' role in evaluating. In addition, unlicensed personnel may also offer their opinions of employees.

The first mate, rather than the junior officers, disciplines the crew after consulting with the master. The first mate may counsel the employee, try to resolve the problem, or issue a verbal or written warning. In such situations, the watch officer generally acts as a witness. There is no evidence that the watch officers have any part in deciding appropriate discipline. Watch officers, however, do have the authority to order "off watch" or "off ship" any employee for intoxication, striking an officer, fighting, or refusing to follow orders, with corresponding authority to authorize overtime, as employees ordered "off watch" would have to be replaced.

## II.

Based on the foregoing, we find, contrary to the Regional Director, that second and third mates and assistant engineers are not supervisors within the meaning of the Act. The Board has a duty "not to construe super-

visory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intended to protect.” *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985), *affd.* in relevant part 794 F.2d 527 (9th Cir. 1986) (footnote omitted). The burden of proving supervisory status is on the party who alleges that it exists. *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979); *George C. Foss Co. v. NLRB*, 752 F.2d 1407, 1410 (9th Cir. 1985). Moreover, supervisory authority must be exercised with independent judgment, rather than in a routine or clerical fashion. *Highland Superstores v. NLRB*, 927 F.2d 918 (6th Cir. 1991); *Walla Walla Union-Bulletin v. NLRB*, 631 F.2d 609, 613 (9th Cir. 1980).

Applying the foregoing standards to the facts of this case, we find insufficient support for the Regional Director’s conclusion that the Employer’s junior officers are statutory supervisors. Initially, we find, in agreement with the Regional Director, that the evidence does not establish that second and third mates and assistant engineers exercise supervisory authority with respect to hiring, firing, evaluating, promoting, or granting wage increases to employees, or that they effectively recommend such actions. These individuals perform, at best, a reporting function that is not supervisory under the statute. *Northcrest Nursing Home*, 313 NLRB 491, 497–498 (1993).

Further, we find that the second and third mates, and the assistant engineers, do not exercise statutory supervisory authority with respect to discipline, or the requirement that employees work overtime to replace disciplined workers. The Board has consistently found that the authority, as exists here, to order intoxicated or insubordinate employees to leave the workplace does not constitute the statutory authority to discipline employees, as such violations are so egregious and obvious that little independent judgment is needed.<sup>5</sup> Concomitantly, the alleged ability to order overtime—due to the necessity to replace the disciplined employee—in such egregious situations does not compel a finding of supervisory status as there is no evidence that the disputed employees utilize independent judgment in making such assignments. Cf. *NLRB v. Res-Care, Inc.*, 705 F.2d 1461, 1464 (7th Cir. 1983); *Quadrex Environmental Co.*, 308 NLRB 101 (1992). Thus, contrary to the Regional Director, the evidence with respect to assignment of overtime, emanating from decisions regarding imposition of discipline in extreme circumstances, does not establish that the second and third mates and assistant engineers are supervisors within the meaning of Section 2(11).<sup>6</sup>

<sup>5</sup> *Northcrest Nursing Home*, *supra*; *Great Lakes Towing Co.*, 165 NLRB 695 (1967).

<sup>6</sup> In finding the first assistant engineers to be supervisors, the Regional Director also relied on his finding that these assistant engineers generally assign and approve overtime to oilers and the

Finally, we disagree with the Regional Director’s conclusion that the second and third mates and assistant engineers are supervisors based on their authority responsibly to direct the crew in performing their duties. It is clear that licensed officers, particularly when acting as watch officers, are responsible for directing the unlicensed employees, assigning tasks, and ensuring the safety of the ship and its cargo. We conclude, however, that although the contested licensed officers are imbued with a great deal of responsibility, their use of independent judgment and discretion is circumscribed by the master’s standing orders, and the Operating Regulations, which require the watch officer to contact a superior officer when anything unusual occurs or when problems occur. At the very least, licensed officers are required to notify their superior officers after making any kind of decision affecting the crew or the ship. According to Master Reynolds, a watch officer is to summon him, at the very least, when a doubtful situation occurs, and must notify him after making any decisions affecting the ship, even, for example, changing the ship’s speed. Moreover, at least during the two daylight watches, the master, first mate, and first engineer are all on the bridge. Thus, the licensed officers on watch during daylight have three statutory supervisors available on that watch.

Further, the duties of the crewmembers, both licensed and unlicensed, are delineated in great detail in the Regulations; thus, the officers and crew generally know what functions they are responsible for performing and how to accomplish such tasks.<sup>7</sup> The Employer, however, failed to provide any details regarding how often watch officers actually break with routine, how much deviation is allowed from the master’s standing orders, or how much discretion is actually involved in telling crewmembers to perform their assigned functions. As noted, in nonroutine situations, licensed offi-

pumpman, as well as to the utility person. This bare finding is insufficient, in light of all the other record evidence indicating that the assistant engineers are not statutory supervisors, to convert the first assistant engineers into statutory supervisors. The finding is based on only two nonspecific general pieces of evidence. Captain Reynolds testified as follows:

All overtime has to be approved by the Ship’s Master. And in the case of engine department overtime, it’s approved by the Chief Engineer and the Ship’s Master. . . . On a steam ship we have oilers. It would be the First Engineer who would be assigning the overtime. Typically, the pumpmen and the oilers would come under the First Engineer’s jurisdiction. And if there was a utility person working in the engine department, either o[n] a steam ship, or the gas turbine ship, that responsibility of overtime would also come under the First Engineer’s responsibility.

In addition, the Employer’s standing orders describing the first engineer’s routine, state that that individual “oversees” all overtime work. Such conclusory evidence, without specific explanation that the first assistant engineers in fact exercised independent judgment in making overtime assignments, does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

<sup>7</sup> For example, the duties of the oiler, allegedly “supervised” by the assistant engineer, are specifically set forth in the Regulations.

cers are in constant contact with superior officers. *Quadrex Environmental Co.*, supra; *Somerset Welding & Steel*, 291 NLRB 913 (1988).

We are not unmindful that the licensed junior officers exercise substantial responsibility for ensuring that the ships' functions are carried out properly, and that the crew and cargo remain safe. We believe, however, that their authority to direct the work of the crew is based on their greater technical expertise and experience, rather than being an indication of supervisory authority. *Somerset Welding & Steel*, supra. The training of the licensed officers involves a high level of technical expertise, and they are specifically trained to handle very complex situations.<sup>8</sup> Importantly, however, it appears to be the master and the first mate who actually plan the operations and provide instructions to the watch officer, who then "directs" the crew, for example, to release the ballast or open a tank. Finally, contrary to the Employer's argument, the size and complexity of the machinery and the potential dangers in operating it, are not per se marks of statutory supervisory authority. *Northeast Utilities Service*, supra.

*Sun Refining Co.*,<sup>9</sup> relied on by the Regional Director, is distinguishable. In *Sun*, unlike the present case, all the watch officers had the authority to assign overtime, "based on their independent judgment and interpretation of company regulations." *Id.* at 648. Moreover, they played a greater role in disciplining the crewmembers, "using their judgment in deciding whether the individual should be orally reported to the department head, or immediately removed from the watch. *Ibid.* There was evidence that the disciplinary recommendations of the watch officers were "almost

invariably" accepted. *Ibid.* In addition, junior officers effectively recommended evaluations, and exercised discretion in directing the crew in nonroutine situations without calling the master for instructions. For those reasons, the Board found the mates to be supervisors. Here, the evidence does not establish that the licensed officers possess the same level of authority with respect to personnel matters, or exercise as much independent discretion in directing the crew.

*Marine Engineers District 1 (Crest Tankers)*<sup>10</sup> is also distinguishable. There, the testimony indicated that the second and third engineers were in complete charge of the engine room at times when the vessel was in port and the master and chief engineer were not on-board, that the watch engineer changed the hours and duties of engine room personnel, and that oilers could not take any corrective action in nonroutine situations without directions from the watch engineers. In contrast to the assistant engineers or the mates here, watch engineers in *Crest Tankers* took care of any problems that arose during watch, and were expected to respond to any casualty or malfunction without calling the chief engineer.

Accordingly, in view of the foregoing, we conclude that the second and third mates, and the assistant engineers, are not statutory supervisors within the meaning of Section 2(11) of the Act.<sup>11</sup> Consequently, we reverse the Regional Director's decision with respect to these employees, and find that second and third mates, and assistant engineers on steamers are properly included in the bargaining unit.

#### ORDER

The Regional Director's decision finding second mates, third mates, and assistant engineers to be supervisors is reversed. The Board concludes that these individuals are not supervisors within the meaning of Section 2(11) of the Act, and therefore, they are properly included in the bargaining unit.

<sup>8</sup> Cf. *Northeast Utilities Service Corp. v. NLRB*, 35 F.3d 621 (1st Cir. 1994), in which the court, agreeing with the Board, found pool coordinators and senior pool coordinators, working at the control room of the master dispatch and control center for bulk power throughout New England, not to be statutory supervisors. The court found that although these individuals were highly trained employees who used independent judgment to make and implement complex technical decisions, they did not responsibly direct other employees, and they only used independent judgment within the guidelines of the employer's operating procedures.

<sup>9</sup> 301 NLRB 642 (1991).

<sup>10</sup> 287 NLRB 628 (1987).

<sup>11</sup> See *A. L. Mechling Barge Lines*, 192 NLRB 1118 (1971).